

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2013-000468-001 DT

11/14/2013

HON. HARRIETT CHAVEZ

CLERK OF THE COURT
J. Bower
Deputy

STATE OF ARIZONA
WILLIAM G MONTGOMERY

KAREN B KEMPER

v.

HONORABLE ROBERT P JARVIS (001)
TIMOTHY WILLIAM ELLIOTT (001)

C DANIEL CARRION

REMAND DESK-LCA-CCC

RULING

The Court is in receipt of the Petition for Special Action filed September 6, 2013, and answering brief filed on October 17, 2013. The Court finds that special action relief is appropriate and the issue presented is of county and statewide importance and these issues are likely to recur.

The facts in this case reflect the defendant was charged with Driving under the Influence, A.R.S. §28-1381(A)(1), and Driving While any Drug defined in section A.R.S. § 13-3401, or its metabolite in the person's body, A.R.S. §28-1383(A)(3). The Defendant was in the process of seeking status of qualifying patient/cardholder pursuant to the Arizona Medical Marijuana Act (AMMA), A.R.S. §36-2801 et sec, and had obtained a written certification issued by a physician, designating the person as a qualifying patient, as required for the application process. The Defendant had not completed the process, was not a cardholder and was not entitled to use or possess Marijuana under the AMMA. The Defendant seeks to invoke the affirmative defense to DUI under A.R.S. §28-1381(D), claiming that the written certification he obtained for his application to be the equivalent of a prescription for Marijuana. A.R.S. §28-1381(D), states a person using a drug as prescribed by a medical practitioner licensed pursuant to Title 32, chapter 7, 11, 13, 17 is not guilty of violating subsection A, paragraph 3 of this section.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2013-000468-001 DT

11/14/2013

The State seeks review of the trial Judges finding that the Defendant's written certification meets the definition of being prescribed for purposes of A.R.S. §28-1381(D) and that the evidence of written certification is relevant to A.R.S. §28-1381(D), and relevant to A.R.S. §28-1381(A)(3). The State asserts that the written certification under the AMMA is not relevant since the defendant is not a registered qualifying patient registered to use Marijuana and that the affirmative defense under A.R.S. §28-1381(D), is inapplicable since a written certification alone is not a prescription for use of Marijuana by a licensed medical practitioner. The defense argues the term "prescribed" should be given its ordinary meaning since there is no statutory definition for "prescribe." The defense then claims that AMMA written certification is a prescription which qualifies the invocation of the affirmative defense under A.R.S. §28-1381(D).

The Court finds that with the passage of the AMMA, a cardholder, which is a registered qualifying patient, may use Marijuana only as authorized pursuant to A.R.S. § 36-2802(E). To become a registered qualifying patient, a person must comply with A.R.S. §36-2804.02. This process requires the filing of an application, fee payment and submission of a written certification issued by a physician within 90 days of immediately preceding the date of application. A "written certification", means a document dated and signed by a physician, stating that in the physicians professional opinion, the patient is likely to receive therapeutic or palliative benefit from the medical use of Marijuana to treat or alleviate the patients debilitating medical condition or symptoms associated with the debilitating medical condition. The physician must: (a), Specify the qualifying patients debilitating medical condition in the written certification; (b), Sign and date the written certification only in the course of a physician-patient relationship after the physician has completed a full assessment of the qualifying patients medical history. A.R.S. §36-2801(18).

Prescribe means in a medical sense to direct, designate or order use of a remedy. Prescription means direction of remedy or remedies for a disease and the manner of using them; a formula for the preparation of a drug and medicine. Black's Law Dictionary. Common use of the term is a Physicians written order to a pharmacy to dispense a certain amount of a drug with an explanation of dosage and schedule of dosage.

The Court concludes that a written certification is a Doctors Opinion or attestation that a person suffers from a condition that would benefit from the use of marijuana. The written certification is a part of the application process to be issued a valid registry identification card to lawfully purchase marijuana at an authorized medical marijuana dispensary and use marijuana as authorized under the AMMA. It is not a direction of a remedy or formula for preparation of a drug or medicine and therefore not a prescription.

SUPERIOR COURT OF ARIZONA
MARICOPA COUNTY

LC2013-000468-001 DT

11/14/2013

In this matter, the Court finds that a written certification is not a prescription for a drug by a physician. The written certification therefore is not relevant and the affirmative defense under A.R.S. §28-1381(D), does not apply. Since the defendant was not a cardholder or qualifying patient A.R.S. §36-2802(D), does not apply. The trial Judge therefore abused his discretion in finding that evidence of a written certification is relevant or that A.R.S. §28-1381(D) applies.

IT IS ORDERED remanding this matter to the Trial Court for further proceedings.

NOTICE: LC cases are not under the e-file system. As a result, when a party files a document, the system does not generate a courtesy copy for the Judge. Therefore, you will have to deliver to the Judge a conformed courtesy copy of any filings.